

REPORT OF **POLAND FOR 2003-2005**
ON THE IMPLEMENTATION OF THE ESPOO
CONVENTION ON ENVIRONMENTAL IMPACT
ASSESSMENT IN A TRANSBOUNDARY CONTEXT
for the period mid-2003 to end of 2005

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PART I – CURRENT LEGAL AND ADMINISTRATIVE FRAMEWORK FOR THE IMPLEMENTATION OF THE CONVENTION

Please provide the information requested below in Part I, or revise any information relative to the previous report. Describe the legal, administrative and other measures taken in your country to implement the provisions of the Convention. This part should not be used to describe your experience of applying the Convention, i.e. just the framework for its implementation.

Article 2

General Provisions

DOMESTIC IMPLEMENTATION OF THE CONVENTION

1. *List the general legal, administrative and other measures taken in your country to implement the provisions of the Convention (Art. 2.2).*

Establishment of national and transboundary EIA procedure by means of the following legal acts:

1. The Act of 27 April 2001 on Environmental Protection Law (O.J. 2001/No 62/ Item 627) - "Environmental Protection Law"
2. Regulation of Council of Ministers of 9 November 2004 on the types of projects likely to have significant effects on the environment and on the detailed criteria considering the qualification the project as for preparing the environmental report (O.J. 2004/No 257/Item 2573) - "Regulation"

TRANSBOUNDARY EIA PROCEDURE

2. *Describe your national and transboundary EIA procedures and authorities (Art. 2.2):*
 - a. *Describe your EIA procedure and indicate which steps of the EIA procedure include public participation.*

Since 28 July 2005 (when new EIA provisions came into force), the national EIA procedure has to be conducted on the stage of issuing the decision on environmental requirements of consent for realization of project (so called “environmental decision”). The EIA procedure is to be conducted only once for one project concerned.

The environmental decision has to be obtained at the early, planning stage of project, i.e. before:

1. decision on building consent
2. concession for prospecting for, or exploration of, mineral deposits, for exploitation of minerals from their deposits, for open storage of substances in the ground mass and the landfill of waste in origin, including underground mining excavations (a geological concession);
3. water law permit for the execution of water facilities,
4. decision which sets out the conditions for the execution of works consisting in water regulation and the construction of flood protection embankments as well as land amelioration works, construction site drainage and other earthworks which change the water regime - on sites with significant natural values,

5. decision granting authorisation for a project for the restructuring of rural land holdings,
 6. decision consenting to the change of a forest into agricultural land,
 7. decision granting authorisation for the location of a motorway,
 8. decision granting authorisation for the location of another national road,
 9. notification of construction works / a change in the use of a building or part of it - under the Construction Act (for certain, minor projects such as renovation etc).
- It does not matter if the new decision is to be obtained before or after the localisation decision.

The environmental decision is binding for relevant authorities responsible for decision / notification listed in points 1 – 9 above.

By identifying the environmental requirements for a project, the environmental decision in fact gives the project the environmental go-ahead.

The key elements of national EIA procedure are:

1. screening
2. scoping
3. preparing the environmental report - if needed
4. public consultation (possibility for all stakeholders to submit comments on environmental report or/and application for environmental decision)
5. consultation with relevant authorities responsible for environment and health
6. final decision
7. monitoring and post project analysis- if needed.

EIA procedure varies between the types of projects (annex I or annex II projects – as regulated in relevant Regulation, based on 85/337/EEC and 97/11/EC directive). For annex I (of above directive) projects scoping is optional and is done before application for the environmental decision (there is no need for obligatory scoping, because the detailed requirements for environmental report are listed in the Environmental Protection Law and they can be used instead of scoping). For annex II (of above directive) projects scoping is done after the application for the environmental decision. If developer of the annex I (of above directive) project asks for scoping, it has to provide basic data on the proposed project before it. Screening is done only for annex II (of above directive) projects and is done after the application for the environmental decision.

- b. Describe how the different steps of the transboundary EIA procedure mentioned in the Convention fit into your national EIA procedure.*

Transboundary EIA procedure is a part of national EIA procedure. Transboundary EIA procedure is generally conducted by the authority on the regional or local level, who conducts the national EIA procedure. In some stages MoE is involved (notification and transboundary consultation). EIA procedure varies between the types of projects (annex I or annex II projects – as regulated in relevant Regulation, based on 85/337/EEC and 97/11/EC directive). Activities listed in Annex I to Espoo Convention are included in the above mentioned Regulation and defined by thresholds.

The transboundary EIA procedure is combined with the national EIA procedure. The steps relevant for transboundary EIA procedure only are notification and consultation.

The other steps of transboundary EIA procedure are the same as for the national EIA procedure, with one exception: the scoping procedure is compulsory for all projects subject to EIA.

When the developer assumes that there is a possibility for the proposed project listed in Regulation to have transboundary effects on environment, he is obliged to ask relevant authority to define a scope of the environmental report (compulsory scoping procedure).

If at the scoping stage the project is expected to have significant transboundary effects, the transboundary EIA procedure will be launched.

The first step of transboundary EIA procedure is then the notification. When the EIA authority finds possible transboundary effects, it has to notify the MoE immediately, who notifies the Affected Party (-ies) with basic project data. If the AP shows its interest in the procedure, the relevant authorities agree the time schedule for the whole procedure. If the AP submits comments, they have to be taken into account in defining the scope of the environmental statement. If the environmental report is ready, MoE sends the relevant part of the statement to AP.

Consultation is an obligatory stage of transboundary EIA procedure and is carried out by the EIA authority, but can be taken over by MoE in problematic cases. There is no exact moment during the procedure specified for the consultation. However it has to be conducted after the EIA documentation is completed and before the issuing of final decision.

The results of consultation, including the AP's comments and suggestions to the environmental statement, have to be reviewed at the time of issuing the environmental decision. MoE then sends the final decision to AP.

If Poland is AP, the MoE receives the documentation on the proposed project and forwards it to the regional authority (Voivode), relevant in the light of area affected by the potential transboundary impact. The Voivode makes the documentation available for the public review, in Polish language (but only the parts presenting the potential impact of the project on the environment). The public has 21 days for submitting comments and recommendations.

The Voivode then prepares draft position on proposed project, which includes comments received from the public, and submits it to the MoE. The MoE forwards the final position on proposed project to the PoO.

- c. *List the different authorities that are named responsible for different steps of the transboundary EIA procedure. Also list the authorities responsible for the domestic EIA procedure, if they are different.*

Minister of Environment - is responsible for:

1. notification,
2. agreeing on final schedule (in co-operation of relevant EIA authority),
2. transboundary consultation (optionally - in complicated or/and important cases),
3. providing the AP with relevant EIA documentation,
4. providing the AP with final decision.

Relevant authority for national EIA procedure (depending on the kind of project: Voivode (on regional level), Starost (on county level) or Head of Gmina (on local level)) is responsible for all other steps of procedure.

- d. *Is there one authority in your country that collects information on all the transboundary EIA cases under the Convention? If so, name it. If not, do you intend to establish such an authority?*

Yes, the Ministry of the Environment as a coordinating body for all transboundary cases collects information using the homepage of the Ministerstwa Środowiska for

documentation of the national and transboundary EIA cases
(www.1materialy_informacyjne/bazy_danych/baza_infoos.shtml)

3. *Do you have special provisions for joint cross-border projects (e.g. roads, pipelines)?*

No

IDENTIFICATION OF A PROPOSED ACTIVITY REQUIRING EIA UNDER THE CONVENTION

4. *Is your country's list of activities subject to the transboundary EIA procedure equivalent to that in Appendix I to the Convention?*

Activities listed in Appendix I to the Espoo Convention are included in the in Polish Regulation (see point 1 in this section).

5. *Please describe:*

a. *The procedures and, where appropriate, the legislation you would apply to determine that an "activity", or a change to an activity, falls within the scope of Appendix I (Art. 2.3), or that an activity not listed should be treated as if it were (Art. 2.5);*

Activities listed in Appendix I to the Espoo Convention are included in the in Regulation (see point 1 in this section). According to Polish law for these projects national EIA procedure is compulsory. Therefore there is no procedure to determine whether the concerned activity falls within the scope of Appendix I - the Appendix I is incorporated into the above mentioned Regulation.

Some of the activities not listed in in Appendix I to the Espoo Convention are still included in the in Regulation (see point 1 in this section) and therefore subject to EIA procedure.

When the developer assumes that there is a possibility for the proposed project listed in Regulation to have transboundary effects on environment, he is obliged to ask relevant authority to define a scope of the environmental statement (compulsory scoping procedure). Developer shall enclose the data on possible transboundary effects.

If at the scoping stage the relevant authority reckons that project is expected to have significant transboundary effects, the transboundary EIA procedure will be launched. The same applies to the changes of an activity. However minor changes that have no significant impact on environment are excluded from EIA procedure.

For the activity not listed in Appendix I to the Espoo Convention and not listed in Polish Regulation, there is no possibility to conduct EIA procedure under the Polish law.

b. *How a change to an activity is considered as a "major" change;*

There are some guidelines in Regulation (see point 1 in this section) to consider what changes to activities / projects shall be made subject to national EIA procedure and consequently transboundary EIA procedure if needed. This Regulation requires that the likely significant environmental effects of modifications or changes or extension of activities which for realization need the growth of emission or consumption of raw material, materials, fuels, energy not less than 20 %, must be considered just as those of the activity itself have to be considered. (See also the response to question 5(a)).

- c. *How such an activity, or such a change to an activity, is considered likely to have a “significant” adverse transboundary impact (Art. 2.5, Guidelines in Appendix III); and*

The relevant EIA authority finds out that proposed project may have significant adverse transboundary impact on the environment taking into account:

- distance between a location of proposed project and the border of RP,
- information submitted to him by developer,
- criteria from Appendix III to Espoo Convention - which are repeated in Regulation (see point 1 in this section).

- d. *How you would decide whether it is “likely” to have such an impact. (Art. 2.3)*
see above

PUBLIC PARTICIPATION

6. *Do you have your own definition of “the public” in your national legislation, compared to Article 1(x)? How do you, together with the affected Party, ensure that the opportunity given to the public of the affected Party is equivalent to the one given to your own public as required in Article 2, paragraph 6?*

We do not have separated definition of "the public" in Polish law. The law states that "everyone" have a right to submit comments during the public participation procedure - what in fact falls into scope of definition from Article 1(x).

Poland has no practical experience in this field.

According to Polish law at the notification stage having acquired information on the likely transboundary impact of the proposed project, MoE shall immediately notify affected Party and enclose relevant data on the possible transboundary impact.

At the preparation of the EIA documentation stage having obtained the environmental report, MoE shall forward the relevant parts of it immediately to the AP which participates in the transboundary EIA procedure.

Public participation procedure under that Polish national EIA procedure are conducted when the environmental report is being prepared.

Therefore Polish law assures that the public participation in AP is able to be conducted as soon as possible.

Transmittal of comments depends on the agreement between Poland as PoO and the AP. Usually the authority responsible for collecting comments from AP is Minister of Environment.

After amending the environmental report according to comments from public and authorities of AP the improved environmental report is being sent again to the AP.

The comments from AP are then to be taken into account while defining the scope of the environmental report or amending the environmental report and while granting the final decision.

Detailed provisions on public participation procedure are included in bi-lateral agreements between Poland and neighbouring countries.

Article 3

Notification

QUESTIONS TO PARTY OF ORIGIN

7. *Describe how you determine when to send the notification to the affected Party, which is to occur “as early as possible and no later than when informing its own public”? At what stage in the EIA procedure do you usually notify the affected Party? (Art. 3.1)*

According to the Environmental Protection Law the authority responsible for the notification of proposed activity likely to cause a significant adverse transboundary impact, is the Minister of Environment.

When the developer assumes that there is a possibility for the proposed project listed in Regulation to have transboundary effects on environment, he is obliged to ask relevant authority to define a scope of the environmental statement (compulsory scoping procedure). Developer shall enclose the data on possible transboundary effects specifying:

1. the type, size and location of the project,
2. the surface area of the land occupied and that of the built structure as well as their previous uses and vegetation cover,
3. the type of technology,
4. the possible alternatives,
5. the amount of water and other raw and processed materials, fuels and energy expected to be used,
6. the measures to protect the environment,
7. types and amounts of substances or energies expected to be emitted into the environment when applying the measures to protect the environment,
8. possible transboundary impact on environment.

When the EIA authority finds possible transboundary effects, it has to notify the MoE immediately. Then MoE decides whether to notify AP, taking into account the above-mentioned data. According to Environmental Protection Law, MoE is obliged to send the notification to AP immediately after having acquired information on the possible transboundary impact of the proposed activity.

Notification is supposed to be done as early as possible, preferably at the stage of scoping procedure - i.e. before submission of application for environmental decision. According to Environmental Protection Law, the comments from AP have to be taken into account while defining the scope of environmental report.

8. *Describe how you determine the content of the notification? (Art. 3.2)*

According to the Environmental Protection Law, MoE is obliged to notify the AP on the proposed activity which may have significant adverse transboundary impact on environment, to propose the time frame for response from AP whether AP is interested in participation in EIA procedure and to enclose with the notification the following data:

1. the type, size and location of the project,
2. the surface area of the land occupied and that of the built structure as well as their previous uses and vegetation cover,
3. the type of technology,
4. the possible alternatives,
5. the amount of water and other raw and processed materials, fuels and energy expected to be used,
6. the measures to protect the environment,

7. types and amounts of substances or energies expected to be emitted into the environment when applying the measures to protect the environment,
8. possible transboundary impact on environment.

9. *Describe the criteria you use to determine the time frame for the response to the notification from the affected Party (Art 3.3, “within the time specified in the notification”)? What is the consequence if an affected Party does not comply with the time frame? If an affected Party asks for an extension of a deadline, how do you react?*

No legal provisions in EIA law. The maximum time frame for a response is generally regulated in the bi-lateral agreements between RP and neighbouring countries. For example in the Polish - German agreement the time frame for response from AP is within 30 days from the communication. The extension of a deadline is possible if it not affects the extension of administrative procedure.

10. *Describe when you provide relevant information regarding the EIA procedure and proposed activity and its possible significant adverse transboundary impact as referred to in Article 3, paragraph 5. Already with the notification or later in the procedure?*

The above-mentioned data is being sent together with notification.

According to the Environmental Protection Law, MoE is obliged to notify the AP on the proposed activity which may have significant adverse transboundary impact on environment, to propose the date for response from AP whether AP is interested in participation in EIA procedure and to enclose with the notification the following data:

1. the type, size and location of the project,
2. the surface area of the landoccupied and that of the built structure as well as their previous uses and vegetation cover,
3. the type of technology,
4. the possible alternatives,
5. the amount of water and other raw and processed materials, fuels and energy expected to be used,
6. the measures to protect the environment,
7. types and amounts of substances or energies expected to be emitted into the environment when applying the measures to protect the environment,
8. possible transboundary impact on environment.

11. *How do you determine whether you should request information from the affected Party (Art. 3.6)? When do you normally request information from the affected Party? What kind of information do you normally request? How do you determine the time frame for a response from the affected Party to a request for information, which should be “prompt” (Art. 3.6)?*

No legal provisions or practical experience.

12. *How do you consult with the authorities of the affected Party on public participation (Art. 3.8)? How do you identify, in cooperation with the affected Party, the “public” in the affected area? How is the public in the affected Party notified (what kinds of media, etc are usually used)? What is normally the content of the public notification? Does the notification to the public of the affected Party have the same content as the notification to your own public? If not, describe why not. At what stage in the EIA procedure do you normally notify the public of the affected Party?*

According to Environmental Protection Law, the MoE is responsible for preparing and transmitting the notification on the proposed activity which may have significant adverse transboundary impact on environment, to AP (as described in point 7,8,10). The precise

indication of the relevant authority, which receives the notification, usually is included in the bi-lateral agreements between RP and interested countries. However, there is no obligation for the PoO to transmit the notification directly to the public of the AP (not in the Environmental Protection Law, nor in the bi-lateral agreements).

13. *Do you make use of contact points for the purposes of notification as decided at the first meeting of Parties (ECE/MP.EIA/2, decision I/3), and listed on the Convention website at http://www.unece.org/env/eia/points_of_contact.htm?*

Yes, the points of contact are made use of in this way.

14. *Do you provide any information to supplement that required by Article 3, paragraph 2? Do you, furthermore, follow the proposed guidelines in the report of the first meeting of the Parties (ECE/MP/2, decision I/4)? If not, in what format do you normally present the notification?*

Yes, the proposed guidelines are followed.

QUESTIONS TO AFFECTED PARTY

15. *Describe the process of how you decide whether or not you want to participate in the EIA procedure (Art. 3.3)? Who participates in the decision-making, for example: central authorities, local competent authorities, the public and environmental authorities? Describe the criteria or reasons you use to decide?*

According to Environmental Protection Law, MoE is responsible for the reception and distribution the notification on the proposed activity which may have significant adverse transboundary impact on environment on the territory of RP.

Having acquired the notification, MoE notify the relevant authority(-ies) in the light of the area affected by the possible transboundary impact on the environment, on the regional level (Voivode).

Additionally, in one case, the relevant authorities in the light of the area affected by the possible transboundary impact on the environment, on the local level (Starosts, Heads of gmina) were asked for help.

The content of the notifications from the PoO varies. Generally, the content is not compatible with the article 3(2) Espoo Convention and the report of the first meeting of the Parties in Oslo, ECE/MP/2, decision I/4.

RP as AP, has no possibility to determine whether PoO has notified it no later than when informing its own public. It is difficult to check. Besides the PoO does not provide any information in this field.

The time frames for response to the notification, indicated by the PoOs, varies. So far, there were: no deadlines at all, 30 days and 50 days. Precise indication of deadline for the indication of desire to participate in the EIA procedure is included in some of the bi-lateral agreements between RP and neighbouring countries. For example in the Polish - German agreement the time frame for response from AP is within 30 days from the communication. In most cases RP declares its desire to participate in the EIA procedure on the proposed activity which may have significant adverse transboundary impact on environment on the territory of RP.

Generally, before making a decision whether to participate in this procedure or not, the following criteria are taken into account:

- distance between a location of proposed activity and the territory of RP,
- information on the proposed activity enclosed with the notification,
- criteria from Appendix III to Espoo Convention - which are repeated in Regulation (see point 1 in this section).

Poland as AP has experienced following difficulties in the notification procedure:

- the documentation including information on proposed activity had not been translated into Polish,
- data on proposed activity had not been sufficient to enable MoE to respond,
- data on proposed activity had not complied with the Espoo Convention's requirements.

For those reasons (as mentioned above) MoE had had many difficulties with making a decision on participation in EIA procedure.

16. *When the Party of origin requests you to provide information relating potentially affected environment: (a) how do you determine what is “reasonably obtainable” information to include in your response; and (b) describe the procedures and, where appropriate, the legislation you would apply to determine the meaning of “promptly” in the context of responding to a request for information? (Art. 3.6)*

Only in one case PoO asked RP for the additional information on the proposed activity. In order to collect the requested data, relevant voivodship inspectors of the environmental protection were asked for help.

For RP reasonably obtainable information means information which allows to assess possible transboundary impact and to determine how the environment would change as a result of realization of the proposed activity. Generally the above information includes technical parameters.

There is no provisions and procedures determining the meaning of "promptly" in Polish law. Colloquially, this word is interpreted as "as quickly as possible", which in this case means: after completing the data sufficient to respond to the request.

Article 4

Preparation of the EIA documentation

QUESTIONS TO PARTY OF ORIGIN

17. *What is the legal requirement for the content of the EIA documentation (Art. 4.1)?*

Art. 52 EIA Act reads as follows:

1. The environmental impact statement of a project shall contain:
 - 1) a description of the proposed project, in particular:
 - a) the characteristics of the whole project and the conditions for site use at the stages of construction and operation;
 - b) the main characteristic features of production processes;
 - c) the envisaged levels of emissions caused by the operation of the proposed project;
 - 2) a description of the natural elements of the environment exposed to the likely environmental impact of the proposed project;
 - 2a) a description of cultural heritage in the area of proposed project;
 - 3) a description of the alternatives analysed, including the alternative:
 - a) which consists in resignation from undertaking the project,
 - b) which is most favourable for the environment,
 along with reasons for their choice;
 - 4) an assessment of the expected environmental impact for the alternatives analysed, including the impact in the event of a major accident as well as the possible transboundary impact on the environment,
 - 4a) an assessment of the expected impact of proposed project on cultural heritage

5) the reasons for the alternative chosen by the applicant, indicating its impact on the environment, in particular on human beings, animals, plants, land surface, water, air, climate, material assets, cultural heritage and landscape as well as interactions between these factors;

6) a description of the expected significant environmental effects of the proposed project, including direct, indirect, secondary, cumulative, short-term, medium-term and long-term, permanent and temporary environmental effects caused by:

- a) the existence of the project,
- b) the use of environmental resources,
- c) emissions

and a description of the assessment methods applied by the applicant;

7) a description of the measures envisaged to prevent, reduce or offset in terms of nature conservation the adverse effects on the environment;

7a) in case of road projects referred to in Article 51, paragraph 1 – define assumption data for rescue and protection of cultural heritage;

8) where the proposed project involves the use of an installation, a comparison, subject to paragraph 2, of the proposed technology with a technology which meets the requirements referred to in Article 143,

9) an indication as to whether the project requires the designation of a restricted use area, the delineation of the boundaries of such an area, the imposition of restrictions on the range of use of the area and technical requirements for built structures and their uses;

10) the presentation of issues in graphic form;

11) analysis of potential social conflicts in relation to the proposed project;

12) the presentation of the proposed monitoring of the effects of the proposed project at the stages of construction and operation;

13) an indication of difficulties caused by technical deficiencies or gaps in current knowledge as encountered in preparing the report;

14) a summary of the information contained in the report in a non-technical language;

15) the name(s) of the person(s) who has(have) prepared the report,

16) sources of information providing the basis for the report.

18. *Describe your country's procedures for determining the content of the EIA documentation (Art. 4.1).*

Art. 49.

1. Before submitting an application for the environmental decision may request that the authority competent for the granting of the decisions should define the scope of the environmental impact report – with regard to the projects referred to in Article 51, paragraph 1, subparagraph 1 (Annex I of the Directive).

1 a. When the developer assumes that there is a possibility for the proposed project referred to in Article 51, par. 1, subpar. 1 (Annex I of the Directive with obligatory report) to have transboundary effects on environment, he is obliged to ask relevant authority to define a scope of the environmental report (compulsory scoping procedure). Developer shall enclose the data on possible transboundary effects.

Art. 51

2. The requirement to prepare the environmental impact report for a proposed project referred to in paragraph 1, subparagraph 2 (Annex II projects subject to screening), shall be imposed, by way of an interim decision, by the authority competent for granting an environmental decision, defining therein the scope of the environmental impact report; the competent authority shall consider jointly the detailed criteria laid down in paragraph 8, subparagraph, 2 ..

Article 60

1. Where the administration authority which carries out the EIA procedure for a proposed project finds that it may have a transboundary impact on the environment as a result of its implementation:

1) it shall issue an interim decision that the procedure relating to the transboundary impact on the environment shall be carried out, setting out the scope of this documentation indispensable for this procedure to be carried out, imposing on the applicant the obligation to prepare documentation in the language of the country in whose territory the project may have its impact.

Article 64

1. Comments and recommendations concerning data referred to in Art. 49.3 submitted by the state which participates in the EIA shall be taken into account in making the interim decision on the scope of the EIA report.

19. *How do you identify “reasonable alternatives” in accordance with Appendix II, alinea (b)?*

Reasonable alternative is a realistic decision undertaken by estimation of an expected environmental impacts and potential purpose set by proponent.

20. *How do you identify “the environment that is likely to be affected by the proposed activity and its alternatives” in accordance to Appendix II, alinea (c), and the definition of “impact” in Article 1(vii)?*

See question 5(c)

21. *Do you give the affected Party all of the EIA documentation (Art. 4.2)? If not, which parts of the documentation do you provide?*

We provide only this part of EIA documentation (Art. 60. 3 the Environmental Protection Law) which enables AP to assess adverse significant impact on its environment and data (see question 10).

22. *How is the transfer and reception of the comments from the affected Party organized? How does the competent authority in your country (as the Party of origin) deal with the comments? (Art. 4.2)*

Usually the comments on the EIA documentation are sent directly to the Ministry of Environment or to the competent authority. The MoE transfers them to the competent authority. Comments and recommendations submitted by the state participating in the EIA procedure shall be taken into account by competent authority in granting environmental decision.

23. *Describe the procedures and, where appropriate the legislation you would apply to determine the time frame for comments provided for in the words “within a reasonable time before the final decision” (Art. 4.2)? What is the consequence if the affected Party does not comply with the time frame? If an affected Party asks for an extension of a deadline, how do you react?*

It is the time given to the AP for their comments which shall be taken into account by competent authority in granting environmental decision. In justifiable cases this term can be extended. According to Polish - German agreement the time frame for response from AP is within 90 days from sending the EIA documentation. The extension of a deadline is possible if it not affects the time frame of the administrative procedure.

24. *What material do you provide, together with the affected Party, to the public of the affected Party?*

The part of the EIA documentation which enables AP to assess adverse significant impact on its environment, data (see question 10), technical summary, the project application with documentation, the part of the final decision.

25. *Do you initiate a public hearing for the affected public, and at what stage, whether in the affected Party, in your country or as a joint hearing? If a public hearing is held in your country, as Party of origin, can the public of the affected Party, public authorities, organizations or other individuals come to your country to participate?*

PoO does not initiate a public hearing for the AP. Before the administration authority competent for making decisions requiring public participation makes such a decision, as it commences the procedure the authority may conduct an administrative trial open to the public, as well to the public of the AP. Usually the public hearing takes place after preparation of the EIA documentation.

QUESTIONS TO AFFECTED PARTY

26. *Describe the procedures and, where appropriate, the legislation you would apply to determine the meaning of the words “within a reasonable time before the final decision”, this being the time frame for comments (Art. 4.2)?*

Usually it is the time given by the PoO for comments, which should be flexible in some cases. According to Polish - German agreement the time frame for response from AP is within 90 days from sending the EIA documentation.

27. *Who is responsible for the organization of the public participation in the affected Party? Is the public participation normally organized in accordance with your legislation as the affected Party, or with the legislation of the Party of origin, or with ad hoc procedures, or with bilateral or multilateral agreements?*

Public participation in the AP is organized by AP according to AP's legislation, but with the time frame appointed in accordance with the legislation of the PO to ensure the public of the AP, the equivalent opportunity to participate in relevant EIA procedures. In Poland there is 21 days for the public participation.

Article 5

Consultations

QUESTIONS TO PARTY OF ORIGIN

28. *At which step of the EIA procedure does the consultation in accordance with Article 5 generally take place? Describe the procedures and, where appropriate, the legislation you would apply to determine the meaning of “undue delay”, with regard to the timing of entry into consultation? Do you normally set the duration for consultations beforehand? If there seems to be no need for consultation, how do you determine not to carry out consultations?*

According to Polish law after forwarding by Minister of Environment the EIA documentation to AP, the authority responsible for EIA in transboundary context procedure shall hold consultation with AP in accordance to the dates of the stages of the procedure agreed earlier (on the confirmation of participation stage). As practical experiences shows the consultation is more efficient when they are carried out after official AP's comments are sent to the PoO. Poland as a PoO usually send the letter describing mitigation measures and the other solutions that match the affected party's comments. In the same letter Polish

authority asks for the confirmation concerning the necessity of the consultation. The legal base for that is the Environmental Protection Act.

29. *On what level do you arrange for consultation: national, regional or local? Who usually participates in the consultation? Describe the responsibilities of the authorities involved. By what means do you usually communicate in consultations, for example by meeting, exchange of written communications?*

In accordance to Polish law, when Poland is PoO the authority responsible for carrying out the environmental impact assessment in transboundary context procedure shall hold consultations. In most cases the competent authority is at the local level - gmina, in the other (roads, railways or pipelines), the competent authority is wojewoda (regional level). Where Minister of Environment deems it purposeful because of the importance or intricacy of the case, he may take over the consultations.

QUESTIONS TO AFFECTED PARTY

30. *On what level is the consultation normally held: national, regional or local? Who normally participates in the consultation? By what means do you usually communicate in consultations, for example by meeting or by the exchange of written communications? How do you indicate if there is no need for consultations?*

The consultation is arranged on governmental level but some representatives of voivod (regional level) may be present. Polish side as AP usually represent people from Ministry of Environment, people from regional level and experts involved earlier as a members of special body. Consultation might be carried out by different means, but the most efficient is the special meeting organised by the PoO. When there is no need for consultation Poland confirms so in special letter or during working meeting.

Article 6

Final decision

QUESTIONS TO PARTY OF ORIGIN

31. *Describe what is regarded as the “final decision” to authorize or undertake a proposed activity (Art. 2.3). Do all projects listed in Appendix I require such a decision?*

The final decision is the environmental decision (as refferd in point 2.a).

According to Environmental Protection Law the environmental decision has to:

- identify the project,
- indicate its localisation,
- indicate the conditions for project delivery and operation (with special emphasis on nature conservation, natural resources and historic sites and the nuisance caused to the neighbourhood),
- indicate the environmental protection requirements to be included in the construction design,

and, if needed:

- indicate requirements in order to prevent major accident,
- indicate requirements in order to minimise transboundary effects,
- indicate the need for a restricted use area.

The administration authority may by a final decision impose obligations to prevent, reduce, monitor the effects of the project on the environment and nature compensation and may impose on the applicant the obligation to submit a follow-up analysis, defining its scope and the time of its submission.

In addition, attached to the decision will be a profile of the whole project.

According to Polish law (Environmental Protection Law and Regulation (see point 1 of questionnaire) activities listed in Annex I to Espoo Convention are subject to EIA procedure and therefore require the environmental decision (see point 2 of questionnaire for details).

32. *How does the EIA procedure (including the outcome) in your country, whether or not transboundary, influence the decision-making process for a proposed activity? (Art. 6.1)*

According to Environmental Protection Law, while granting the environmental decision, the relevant authority has to take into account:

- comments from AP on environmental statement,
- results of transboundary consultations.

Additionally, according to principles of administrative procedure, while granting the administrative decision the authority has to take into account all information gathered during the procedure. For the environmental decision it is respectively: comments from public and relevant authorities and information in EIA documentation.

33. *Are the comments of the authorities and the public of the affected Party and the outcome of the consultations taken into consideration in the same way as the comments from the authorities and public in your country (Art. 6.1)?*

See above.

There is no distinction in Polish law as for comments from authorities and public of AP and comments from authorities and public of RP.

34. *How is the obligation to submit the final decision to the affected Party normally fulfilled? Does the final decision contain the reasons and considerations on which the decision is based? (Art. 6.2)*

According to Environmental Protection Law, MoE is obliged to send the final decision to AP.

According to Administrative Procedure Code, all administrative decisions have to contain the reasons and considerations on which they are based. As for the environmental decision there is additional requirement that the authority can not resign from the above-mentioned requirement.

35. *If additional information comes available according to paragraph 3 before the activity commences, how do you consult with the affected Party? If need be, can the decision be revised? (Art. 6.3)*

No practical experience yet.

Article 7

Post-Project Analysis

36. *How do you determine whether you should request a post-project analysis to be carried out (Art. 7.1)?*

When is the necessity to compare the findings of the environmental impact report and the provisions of the decision with the real effects of the project on the environment and the measures undertaken to reduce them.

37. *Where, as a result of post-project analysis, it is concluded that there is a significant adverse transboundary impact by the activity, how do you inform the other Party and consult on necessary measures to reduce or eliminate the impact pursuant to Article 7, paragraph 2?*

We have no experience yet, but for sure the AP should be informed about it and the Parties should enter into consultations or issue of PA should be discussed and fixed in bilateral agreements.

Article 8

Bilateral and multilateral agreements

38. *Do you have any bilateral or multilateral agreements based on the EIA Convention (Art. 8, Appendix VI)? If so, list them. Briefly describe the nature of these agreements. To what extent are these agreements based on Appendix VI and what issues do they cover? If publicly available, also attach the texts of such bilateral and multilateral agreements, preferably in English, French or Russian.*

We have one formal bilateral agreement:

1. The agreement between the Government of Poland and Lithuania which got in force in May 2004.

There is one signed agreement which soon get in force:

2. The agreement between the Government of Poland and German Federal Republic;

There are two draft bilateral agreements:

3. The agreement between the Government of Poland and the Czech Republic.

4. The agreement between the Government of Poland and the Slovak Republic.

All bilateral agreements contain some general principles on applying EIA in a transboundary context and they regulate:

1. Translation of EIA documentation

2. Time frame for preparing and sending statement of affected party

3. Format for notification

4. Principles of public participation

5. Distribution and content of EIA documentation

These agreements take into account differences between Parties and deal with the practical institutional aspects of EIA transboundary context indicated in App. VI (b and d). The Polish-German Agreement is more detailed than the others. It is a sort of guidelines for Polish and German officials, describing stages of EIA transboundary procedure. Other agreements are more general with references to the articles and appendixes of the Convention.

39. *Have you established any supplementary points of contact pursuant to bilateral or multilateral agreements?*

Yes, in Polish-German agreement a supplementary points of contact has been established.

Article 9

Research programmes

40. *Are you aware of any specific research in relation to the items mentioned in Article 9 in your country? If so, describe it briefly.*

No.

Ratification of the amendments to the Convention and of the Protocol on SEA

41. *If your country has not yet ratified the first amendment to the Convention, does it have plans to ratify this amendment? If so, when?*

Poland has already ratified the first amendment to the Convention.

42. *If your country has not yet ratified the second amendment to the Convention, does it have plans to ratify this amendment? If so, when?*

The formal ratification is expected in 2007r.

43. *If your country has not yet ratified the Protocol on SEA, does it have plans to ratify the Protocol? If so, when?*

We are planing to ratify the protocol as soon as possible. But there is no definite time for schedule for this task at the moment.

PART II – PRACTICAL APPLICATION DURING THE PERIOD 2003-2005

Please report on your practical experiences of applying the Convention (not your procedures described in Part I), whether as Party of origin or affected Party. The focus here is on identifying the best practice as well as difficulties Parties encountered in applying the Convention in practice to enable Parties to share solutions. Parties should therefore provide appropriate examples highlighting application of the Convention and innovative approaches to improve application of the Convention.

CASES DURING THE PERIOD 2003-2005

44. *Do you have any practical experience of applying the Convention in this period (yes/no)? If you do not have any such experience, why not?*

Yes

45. *Does your national administration have information on the transboundary EIA procedures that were underway during the period? If so, please list these procedures, clearly identifying for each whether your country was the Party of origin or the affected Party. If you have not provided a list of transboundary EIA procedures in connection with previous reporting, also provide a list of those procedures. If possible, also indicate for each procedure why it was considered necessary to apply the Convention.*

Party of Origin:

- extraction of minerals on baltic sea and co-operation (with Sweden)
- construction of sewage system network for gmina Krzyzanowice (with Czech Republik)

Affected Party (with Germany):

- water transmission from Berzdorf lake for inundation of mining damages,
- waterway from Schwedt to Szczecin
- offshore windfarms on Baltic Sea,
- constructions for flood prevention in Ostritz
- bridge construction in Frankfurt/Oder
- construction of machine in paper mill in Schwedt
- extension of turkey farm in Cochen
- construction of fuel boiler in paper mill in Schwedt

46. *Are there other projects than those mentioned above for which a transboundary EIA procedure should have been applied, but was not? Explain why.*

No

47. *Provide information on the average durations of transboundary EIA procedures, both of the individual steps and of the procedures as a whole.*

At least one year is needed for the transboundary procedure (from notification to final decision). The longest step is the public participation and collecting comments and consultation - as an affected party, and preparing response for the AP's comments and also consultation - as a PoO.

48. *If you have had practical experience, has the implementation of the Convention supported the prevention, reduction or control of possible significant transboundary environmental impacts? Provide practical examples if available.*

Yes. The best example is that mitigation measures or monitoring have been applied, that were suggested by the AP (ex. Berzdorf lake and the amount of water that can be taken from border river Nysa Łużycka, the monitoring of groundwater level, extraction of minerals on Baltic Sea and counting birds resting there, the process of re-cultivation)

49. *How have you interpreted in practice the various terms used in the Convention, and what criteria have you used to do this? Key terms include the following: “promptly” (Art. 3.6), “a reasonable time” (Art. 3.2(c), Art. 4.2), “a reasonable time-frame” (Art. 5), and “major change” (Art. 1(v)). If you are experiencing substantial difficulties interpreting particular terms, do you work together with other Parties to find solutions? If not, how do you overcome the problem?*

The time frames are usually set in bilateral agreement between parties (ex. Polish – German agreement). Major change is defined by Polish provisions

50. *Share with other Parties your experience of using the Convention. In response to each of the questions below, either provide one or two practical examples or describe your general experience. You might also include examples of ‘lessons learned’ in order to help others.*

a. *How in practice have you identified transboundary EIA activities for notification under the Convention, and determined the significance and likelihood of adverse transboundary impact?*

The procedure might be carried out for project listed in Polish regulation (transposing Annex I and II of the EIA directive). There are the thresholds for the projects that may have the adverse impact on the environment.

b. *Indicate whether a separate chapter is provided on transboundary issues in the EIA documentation. How do you determine how much information to include in the EIA documentation?*

Yes, in the EIA documentation there is a separate chapter providing information on transboundary aspects of the proposed activity.

c. *What methodology do you use in impact assessment in the (transboundary) EIA procedure (for example, impact prediction methods and methods to compare alternatives)?*

On a regular basis multi-criteria-analyses is used to compare alternatives.

d. *Translation is not addressed in the Convention. How have you addressed the question of translation? What do you usually translate? What difficulties have you experienced relating to translation and interpretation, and what solutions have you applied?*

The scope of the documents that must be translated is set by the Polish - German bilateral agreement. According to it party of origin have to translate notification part of the EIA documentation that is connected with AP's territory, part of the final decision and other letters. The interpretation must be provided also during consultation.

- e. *How have you organized transboundary public participation in practice? As Party of origin, have you organized public participation in affected Parties and, if so, how? What has been your experience of the effectiveness of public participation? Have you experienced difficulties with the participation of your public or the public of another Party? (For example, have there been complaints from the public about the procedure?)*

No. Poland has never organised public participation in AP's. The EIA report is sent to the point of contact with request to organise the public participation.

- f. *Describe any difficulties that you have encountered during consultations, for example over timing, language and the need for additional information.*

No organisational problems have been occurred.

- g. *Describe examples of the form, content and language of the final decision, when it is issued and how it is communicated to the affected Party and its public.*

Usually it was sent in Polish language. Minister of Environment receiving the final decision requests wojewoda (regional level) for making it available for the public.

- h. *Have you carried out post-project analyses and, if so, on what kinds of projects?*

See point 37

- i. *Do you have successful examples of organizing transboundary EIA procedures for joint cross-border projects? Please provide information on your experiences describing, for example, any bilateral agreements, institutional arrangements, and how practical matters are dealt with (contact points, translation, interpretation, transmission of documents, etc.).*

No

- j. *Name examples of good practice cases, whether complete cases or good practice elements (e.g. notification, consultation or public participation) within cases. Would you like to introduce your case in a form of Convention's fact sheet?*

It is advisable to send the letter describing how the AP's comments are going to be taken into account. The formal letter with question for the necessity of the consultation may make the procedure shorter.

CO-OPERATION BETWEEN PARTIES IN 2003-2005

51. *Do you have any successful examples of how you have overcome difficulties arising from different legal systems in neighbouring countries?*

No

EXPERIENCE IN USING THE GUIDANCE IN 2003-2005

52. *Have you used in practice the following guidance, recently adopted by the Meeting of the Parties and available on-line? Describe your experience of using these guidance documents and how they might be improved or supplemented.*

- a. *Guidance on public participation in EIA in a transboundary context;*

We have not information in that respect.

- b. *Guidance on subregional cooperation; and*

We have not information in that respect.

c. *Guidelines on good practice and on bilateral and multilateral agreements.*

We have found it very useful during preparation of bilateral agreements.

CLARITY OF THE CONVENTION

53. *Have you had difficulties implementing the procedure defined in the Convention, either as Party of origin or as affected Party? Are there provisions in the Convention that are unclear? Describe the transboundary EIA procedure as applied in practice, where this has varied from that described in Part I or in the Convention. Also describe in general the strengths and weaknesses of your country's implementation of the Convention's transboundary EIA procedure, which you encounter when actually applying the Convention.*

The provisions of Espoo Convention has been transposed to the EIA Act. Practical application of the Convention is regulated by bilateral agreements. There are no difficulties in implementing the procedures of the Convention.

AWARENESS OF THE CONVENTION

54. *Have you undertaken activities to promote awareness of the Convention among your stakeholders (e.g. the public, local authorities, consultants and experts, academics, investors)? If so, describe them.*

Seminars and workshops have been organized for local authorities, the representatives of regional authorities were invited for elaboration of bilateral agreement, information about guidance was sent to authorities in order to inform public, investors, etc.

55. *Do you see a need to improve the application of the Convention in your country and, if so, how do you intend to do so? What relevant legal or administrative developments are proposed or on-going?*

See point 53.

SUGGESTED IMPROVEMENTS TO THE REPORT

56. *Please provide suggestions for how the report may be improved.*

No suggestions